

# Workers' Comp & Safety News



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## Covering the Forgotten Workers

You might think your workers' compensation covers all work-related injuries and illnesses. This could prove a costly mistake.

In most cases, workers' compensation will cover work-related injuries and illnesses. But in certain special circumstances—which might apply to your company—the basic workers' compensation policy will not provide coverage. This could leave your company on the hook for a costly workers' compensation claim.

### Out-of-State Coverage

On any work day, how many of your employees are on the road or working from home? U.S. residents logged



## Risk Note

As this issue went to press, Congress hadn't reauthorized TRIA, the Terrorism Risk Insurance Act of 2002. Unless extended, the federal terrorism insurance backstop TRIA created will expire on December 31. What does this mean for your workers' compensation program?

By law, workers' compensation must cover all injuries your employees sustain at work—even if caused by terrorism. The terrorism events of September 11, 2001 caused workers' compensation claims costing at least \$1.8 billion...and growing. Since 9/11, insurers have classified businesses with many employees in a single building in a ma-

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452 million person trips for business purposes in 2013, says the U.S. Travel Association. Person-trips involve travel of 50 or more miles, or an overnight stay in paid accommodations. Many of these trips involve out-of-state travel.

Many employees also telecommute. A 2013 Harris poll found that one in 10 U.S. workers worked either exclusively from home or mainly from home. Either business travel or telecommuting could pose workers' compensation claim problems. Did you know that an employee injured in another state while on business may be able to elect to receive benefits in that state if...

- ✱ The injury takes place there
- ✱ The employee's principal place of work is located there
- ✱ The employee entered into a contract of employment there
- ✱ The employee lives there
- ✱ The employee is principally located there.

Although the typical workers' compensation policy provides out-of-state coverage, it provides only the level of benefits required by state law. If an injured employee opts to receive benefits in another state, you might have a coverage gap if that state provides more generous benefits.

Further, the typical policy limits out-of-state coverage to employees "who are hired in (state) and...temporarily working anywhere outside of (state) on a specific assignment." This disqualifies telecommuters who live out-

side the state or who are working outside the state on a more permanent basis.

Finally, failure to have coverage in the state of injury may void the "exclusive remedy" protections of the workers' compensation system. This risk increases if your employee is working out of state on a more permanent basis. With the "exclusive remedy," an employee foregoes the right to sue in exchange for receiving medical treatment and lost time benefits guaranteed by state workers' compensation law. If the exclusive remedy doesn't apply, an employee may file a civil lawsuit against you for his or her injuries.

### Do You Need "Other States Coverage"?

Other states insurance gives you coverage to meet your workers' compensation obligations under the workers' compensation law of any state listed in your policy's declarations page. It does NOT apply to the monopolistic fund states: Ohio, North Dakota, Washington and Wyoming. These states have a state-controlled workers' compensation plan and prohibit private insurers from writing mandatory workers' compensation coverage in their borders. It also does not apply to Canadian provinces. To obtain coverage for these areas, you need an "extended protection endorsement."

Some workers' compensation insurers (particularly smaller ones) have licenses in only one or a few states. Your insurer cannot pay your employees directly for a claim if the injury occurs in a state for which your insurer lacks a license. To protect your business, you can ask the insurer to word your policy so

**major metropolitan area as high risk, along with businesses that have a concentration of employees in or near a "trophy building."**

**TRIA provides reinsurance that will kick in once insurers pay \$100 million in a year for losses due to a "certified terrorist act" (as determined by the U.S. State Department). In other words, private insurers would pay the first \$100 million of terrorism losses, but after that point, the federal government and insurers would share in the cost of paying terrorism-related claims. Without TRIA's protection, insurers may have to increase premiums dramatically to cover terrorism-related claims. For information, please contact us.**

that it will reimburse you for any benefit payments you have to make.

Finally, consider the risks involved when an employee travels overseas for work. Courts have often ruled that an injury or illness that an employee suffers while on short-term assignment away from home—even if *he or she is not working when it occurs*—is work-related. But a basic workers' compensation policy will probably not cover this type of claim. A foreign workers' compensation policy will. Although no law requires employers to provide this coverage, you risk paying medical and lost-time costs out of pocket if you do not have coverage and a traveling employee becomes injured. Consider the fact that medical evacuation alone can cost more than \$50,000, and a complicated case

as much as \$250,000. Buying coverage makes good financial sense!

### Volunteer Coverage

Most states do not require nonprofit organizations or public agencies to provide workers' compensation coverage to unpaid volunteers. But some organizations opt to provide coverage, for several important reasons. Some feel a moral obligation to provide protection to their valued volunteers. This can affect morale: volunteers who have this coverage know they will not have to pay medical expenses out of pocket for any injuries occurring from their volunteer work.

Covering volunteers as employees can protect your organization from litigation in ambiguous cases, as when a worker is sometimes paid and sometimes unpaid. Finally, without the "exclusive remedy" of workers' compensation, an injured volunteer can sue your organization in court, creating a much larger risk exposure.

If your nonprofit organization chooses to cover volunteers, your board of directors or other governing body must first adopt a resolution to provide this coverage. If your workers' comp carrier won't cover volunteers, you might want to provide volunteers with accident and medical insurance...and be sure to have adequate limits on your commercial general liability policy.

An analysis of your workers' compensation risk exposures could turn up other potential coverage gaps. Please contact us for more information. ■

## Using Surveillance in Workers' Comp Claims

Surveillance can help employers manage workers' compensation claims in three ways: by providing evidence for claim investigations, by influencing employee behavior, and by pointing out safety problems. Here's what employers need to know.

### Using Video in Workers' Compensation

Today's video surveillance systems cost less and provide better images than ever before. In addition to enhancing security and preventing theft, they can also help employers manage workers' compensation claims. However, employers should be sensitive to employees' privacy.

### Cameras Where?

No federal law prohibits video monitoring of the workplace, even if employees do not know or consent to monitoring. Only two states, Connecticut and Delaware, require employers to disclose video monitoring to employees. Elsewhere, employees generally have no privacy rights in "public spaces." However, in areas where they have a "reasonable expectation of privacy," such as an enclosed office, rest room or locker room, courts have generally ruled in favor of employees' privacy rights.

In general, therefore, if the general public (or any employee) has access to an area, an

employer can probably record video there. Audio recordings might be a different thing, though.

If your video equipment records sound as well as images, wiretapping and eavesdropping laws might apply. Federal law and the majority of states permit recording of phone calls and other electronic communications with the consent of at least one party. Twelve states (California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington) require all parties to a conversation to consent to being recorded. In every state, employers should disclose that employees might be subject to audio and video recording while on company property. For further advice, please contact an employment attorney.

If your resources are limited (and whose aren't?), you will probably want to focus placing video cameras in high-risk areas. Depending on your circumstances, this could be:

☀ On the dashboards of company cars or trucks. Some dash cameras have sensors that allow them to activate when the vehicle does certain things, such as reaching a certain speed, crashing, etc. Dash cameras can record the location and speed of the vehicle and can provide valuable evidence for investigating an accident.

☀ In parking lots and stairwells. Injuries that occur on your premises—including parking lots—might fall under your workers' compensation policy. If employees claim workers' compensation benefits for a slip-and-fall injury sustained in the parking lot, video footage can either support or rebut their claims.

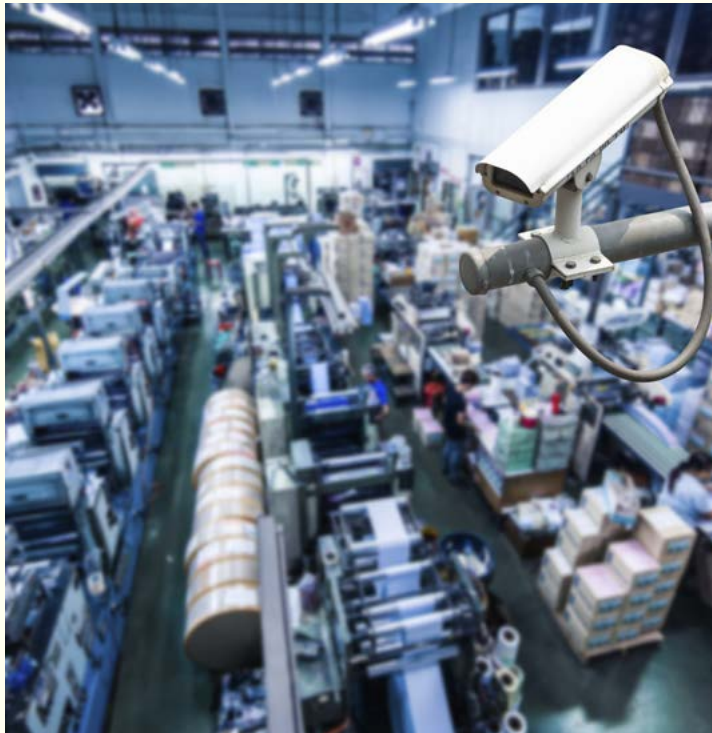
☀ In hazardous work zones. Video cameras can ensure employees wear protective gear and follow safety procedures.

### Improving Behavior

Organizations that use video surveillance systems have found them useful in disputing fraudulent or exaggerated claims. On the other hand, when a legitimate accident occurs and there are no witnesses, a video recording can help ensure an employee gets the benefits he/she needs and deserves.

Installing video cameras might do more for you than just help you investigate potentially fraudulent claims. In a 2013 study, researchers from Brigham Young University and

Massachusetts Institute of Technology found that theft monitoring information technology products not only helped restaurants detect



fraud, they also prevented fraud by changing employee behavior. The take-home? Knowing they're being watched removes the temptation to cheat. This has implications for workers' compensation claims as well as theft prevention, of course. Employees who know they might be watched are less likely to disregard safety precautions and cut corners on the job.

### Safety Improvement

Video cameras can also bring awareness to safety hazards. By showing the events that lead up to an accident, a video recording can reveal if other factors contributed to the accident. Whenever an accident occurs, safety managers should review any available surveillance recordings for that area to look for causation. For example, if a slip-and-fall claim occurred, were the floors wet? Have other people had near-misses due to wet or slippery floors in that area?

Video recordings can also help safety managers discover shortfalls in safety systems and procedures. Perhaps an accident hasn't occurred yet, but an employee has complained that her protective gear interferes with her work, or another employee feels unsafe performing a certain task. Video cameras can record the same task being performed multiple times and possibly by multiple people. This can help a safety manager develop better solutions by determining whether the problem is employee-specific, equipment-specific or task-specific.

For more on using surveillance to investigate potentially fraudulent claims, please see the article on P. 4.

For more information on handling workers' compensation claims, please contact us.



# Can Telemedicine Lower Workers' Compensation Costs?

Earlier this year, the Alaska state legislature passed House Bill 281, which allows a physician to prescribe drugs without a physical examination. In doing so, it opened the door to telemedicine, at least in remote areas.

**A**s the name implies, telemedicine encompasses any medical activity involving distance. Today telemedicine, or telehealth, uses electronic information and telecommunications, but the practice goes back to the days when sea captains would use ship-to-shore radio to obtain medical advice.

Telehealth includes such technologies as telephones, facsimile machines, electronic mail systems, and remote patient monitoring devices, which collect and transmit patient data for monitoring and interpretation. The Centers for Medicare & Medicaid Services (CMS) says, "...telemedicine seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site." CMS views telemedicine as "...a cost-effective alternative to the more traditional face-to-face way of providing medical care (e.g., face-to-face consultations or examinations between provider and patient)..."

## Telemedicine in Workers' Comp

As telemedicine gains acceptance, look for it to play an increased role in medical treatment of workers' compensation injuries.

Telemedicine can help an injured worker get proper treatment sooner, particularly in remote or rural areas where medical help or specialists might be far away. In addition, telemedicine technologies deployed in ambulances can help speed diagnosis and the initiation of important, potentially lifesaving interventions.

Telemedicine has the potential to shave \$4.28 billion annually from America's health-care bill, according to a study by the University of Texas Medical Branch. It offers these benefits:

- ✳ Providers get greater access to specialized information and diagnoses
- ✳ Reduction in hospital admissions from emergency departments
- ✳ Reduced wait times for outpatient consultation
- ✳ Increased productivity of healthcare staff
- ✳ Reduction in patient travel time and expenses

The University of Rochester Medical Center in Rochester, N.Y. has a telemedicine center. Its director, Kenneth McConnochie, MD, MPH, told a forum earlier this year that tele-



medicine can handle 85 percent of pediatric primary care visits and 40 percent of emergency room visits. The average telemedicine visit there costs \$75, or one-tenth of the cost of a typical ER visit. They also save parents time and money.

The state of Georgia launched a telemedicine partnership in 2005 to provide better health services to the state's large rural population, and to address a shortage of specialists. Paula Guy, CEO of the nonprofit Georgia Partnership for Telehealth, reported that a random sample of Georgia telehealth visits from 2011 saved the average patient travel time of 124 miles per encounter and a total of nearly \$762,027 in fuel costs over 40,009 telehealth visits.

So why aren't we seeing more providers racing to deploy telemedicine technologies? One word: money. Many private health insurers and Medicaid do not pay for telemedicine services, so physicians and health centers have little incentive to adopt them.

That's too bad. Georgia requires payers (insurance companies and self-insured em-

ployers) to reimburse telemedicine services, but not all states have enacted similar legislation. Of the states that require payers to reimburse providers for telemedicine services, not all require them to reimburse at the same rate that they reimburse for in-person visits.

The combination of sophisticated videoconferencing, electronic medical records, and telemonitoring can revolutionize medical care for all patients. The challenge lies not in the technology, but the pro-

cesses and policies that govern healthcare delivery and payment.

Full integration of telemedicine into the workers' compensation system will depend on the healthcare industry's ability to address certain key barriers, especially insurance reimbursement models; concerns about liability in cases involving telemedicine interventions; and licensure rules that prevent healthcare providers from offering telemedicine consultations across state lines. ■

## How to Handle a Fraud Investigation

**T**he National Insurance Crime Bureau reported that the number of "questionable" workers' compensation claims increased, although the total number of claims decreased between January 1, 2011 and June 30, 2013. "Questionable claims" included claims involving claimant fraud, prior injuries unrelated to work and malingering.

If you suspect a workers' compensation claimant might be committing fraud or malingering, contact your claims adjuster with any evidence. He or she will likely contact the claimant's treating physician to get additional information on the claimant's condition and physical limitations. If those inquiries are inconclusive, he or she might bring in an insurance investigator.

If warranted, an investigator may covertly watch the claimant to see if he or she does activities that would be ruled out by the claimed injuries. Any investigation can create privacy concerns if not handled appropriately:

- \* Use an investigator with experience in handling workers' compensation cases. A licensed professional should know the applicable state and federal privacy laws, which will help you avoid claims you invaded your employee's privacy.
- \* Be clear what you want the investigation to determine. For a work-

ers' compensation claim, you would probably want the private investigator to determine whether an employee is working for pay while supposedly disabled or doing activities that would be proscribed by his/her condition, such as playing golf while out of work with a slipped disk.

- \* Determine your budget. Surveillance can be time-consuming and costs can quickly add up. Weigh the cost of the claim with the likelihood of finding usable evidence of fraud in determining how much you want to spend.
- \* Know what an investigator can and cannot do. An investigator can generally make video recordings in a public location, but many states prohibit the "installation or use of any device for photographing, observing or overhearing events or sounds in a private place without the permission of the people photographed or observed." These states include Alabama, Arkansas, California, Delaware, Georgia, Hawaii, Kansas, Maine, Michigan, Minnesota, New Hampshire, South Dakota and Utah. Maine and Michigan consider either the privacy violation or unauthorized installation or use of a hidden camera a felony. (Source: The Beacon Bulletin, [www.beaconbulletin.com](http://www.beaconbulletin.com)) And of course, trespassing laws would apply to investigators. ■

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